

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE DAVID FORTANEL,

Defendant and Appellant.

B217867

(Los Angeles County  
Super. Ct. No. SA070517)

APPEAL from a judgment of the Superior Court of Los Angeles County.

H. Chester Horn, Jr., Judge. Affirmed as modified.

Ellise R. Nicholson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and David C. Cook, Deputy Attorneys General, for Plaintiff and Respondent.

---

A jury convicted Jose David Fortanel of attempted criminal threats. Included in the fines and penalties the trial court imposed at sentencing was a \$400 fine pursuant to Penal Code section 1203.097. The parties agree this fine was improperly imposed. We modify the judgment to eliminate the fine and otherwise affirm the judgment.

### **BACKGROUND & DISCUSSION**

The underlying facts are not relevant to the sole issue appellant raises on appeal, thus we recount only a brief procedural background. In April 2009, appellant was charged with two counts of making criminal threats in violation of Penal Code section 422.<sup>1</sup> The information filed alleged appellant threatened his ex-girlfriend, and his ex-girlfriend's sister. A jury acquitted appellant of two counts of making criminal threats and also found him not guilty of the lesser included offense of attempted criminal threats with respect to his ex-girlfriend's sister. However, the jury found appellant guilty of making attempted criminal threats to his ex-girlfriend.

The trial court sentenced appellant to a one-year prison sentence and assessed various fines, including a \$400 domestic violence fine under section 1203.097, subdivision (a)(5). At the time of sentencing, section 1203.097, subdivision (a)(5) provided in relevant part: "If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following: . . . . A minimum payment by the defendant of four hundred dollars (\$400) to be disbursed as specified in this paragraph. . . ."

Appellant argues, and Respondent agrees, that since the trial court did not grant appellant probation, by its own terms section 1203.097, subdivision (a)(5), did not apply. We agree. The trial court's assessment of this fine was unauthorized since appellant was not granted probation. We modify the judgment to eliminate the fine, and otherwise affirm. (*People v. Welch* (1993) 5 Cal.4th 228, 235 [reviewing court may correct unauthorized sentence even if error was not raised below]; *People v. Cates* (2009) 170 Cal.App.4th 545, 552.)

---

<sup>1</sup> All further statutory references are to the Penal Code.

### **DISPOSITION**

The \$400 fine assessed pursuant to Penal Code section 1203.907 is stricken. The trial court shall amend the abstract of judgment to reflect the modified judgment, and shall forward copies to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.